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# Jurisdictional Issues in the Enforcement of Tax Laws in Nigeria

*Uche Jack-Osimiri,* Anthony Ekpoudo,** Rowland Ipoule*** and Amara Ijeomah*****

ABSTRACT

This paper examines the controversies that emanate in the enforcement or administration and practice of tax laws, arising from the jurisdiction of the National Assembly and State Houses of Assembly to exercise legislative power to promulgate tax legislation within the limits conferred by the Constitution. The paper notes how jurisdiction guides the relevant tax authorities on how to properly exercise their powers to collect taxes that are allocated to them. It examines how jurisdictional boundaries impact on the taxes collectable among the three tiers of government in Nigeria. The paper also examines the powers of relevant tax authorities to enforce the collection/payment of various taxes assigned to them by fiscal statutes, and proposes certain measures to bring about reforms for the smooth administration and practice of tax laws in Nigeria.

**Keywords:** National Assembly, jurisdiction, enforcement, tax laws, tax payer

## I. INTRODUCTION

Jurisdiction refers to power or authority to control and/or do something. It guides relevant tax authorities (RTAs) on how to exercise their powers to collect taxes that are allocated to them. Jurisdictional boundaries impact on the taxes collectable among the three tiers of government. This paper examines the controversies that emanate from tax law, administration and practice due to the jurisdiction of the National Assembly and State Houses of Assembly to exercise legislative power to promulgate tax legislation within the limits conferred by the Constitution.[1] The paper also examines

* LLB, LLM (London), PhD (Galway, Ireland); Professor of Law, Rivers State University, Port Harcourt; Dean, Faculty of Law (2003-2007) Rivers State University, Port Harcourt; Founding Dean, Faculty of Law (2000-2003), Ebonyi State University, Abakaliki; Head of Department, Private Law (1998-2000), University of Ado-Ekiti. E-mail jackosimiri@yahoo.co.uk

** LLB, LLM, PhD (Calabar), Lecturer at the Faculty of Law, University of Calabar, Nigeria.

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the powers of RTAs to enforce the collection/payment of various taxes assigned to them by fiscal legislation. Oftentimes frictions occur between the federal government of Nigeria through its organ, the Federal Inland Revenue Service (FIRS), state governments through its organ, the State Board of Internal Revenue Service (SBIRS), and local government authorities through the Revenue Committees. This paper also scrutinises, compares and contrasts the applicable principles in some commonwealth countries with identical common law background such as the Caribbean States of Jamaica, Barbados, Saint Lucia, Trinidad and Tobago together with international best practices obtainable in the United States, United Kingdom, Ireland, Canada, Ireland, Malaysia, Singapore, New Zealand, Australia, Kenya, Uganda, Tanzania, Zimbabwe, Malawi and others in an effort to offer proposals for reforms on the subject matter.

## II. JURISDICTION/POWER OF THE NATIONAL ASSEMBLY TO ENACT TAX LAWS FOR THE FEDERATION OF NIGERIA

The CFRN 1999 confers on the federal government of Nigeria (FGN), through the National Assembly, unlimited sovereign powers to impose taxes at whatever rate it deems appropriate.[2] Strictly, taxation is not subject to constitutional limitation.[3] Basically, a taxpayer can only be taxed pursuant to clear legislative[4] enactment when the wordings of statutes are clear to that effect. In other words, there must be an express statutory authority before taxation can be imposed.[5]

Therefore, taxation laws are purely statutory and the FGN, States and LGs cannot impose taxes on and collect taxes from taxpayers unless they are so authorized by legislation.[6] The separation of taxing powers between the three tiers of governmental authorities are guaranteed by law and this

*** LLB, LLM (Calabar), Lecturer, Faculty of Law, University of Calabar, Nigeria.
**** LLB, LLM, PhD (Calabar), Lecturer, Faculty of Law, University of Calabar, Nigeria

[1] Constitution of the Federal Republic of Nigeria (CFRN) 1999, Cap C23 Laws of the Federation of Nigeria (LFN) 2004.

[2] CFRN 1999, Exclusive and Concurrent Legislative Lists.

[3] *Williams v Lagos State Development Property Corporation* (1978) 3 SC 17-19, where the Supreme Court of Nigeria held that tax law is statutory; it represents the policy powers of the State which must be exercised only upon the clear letters of statutory enactments. Consequently, the tax payer can only be taxed pursuant to legislative authority.

[4] *Attorney General v Wiltshire United Dairies* (1921) 37 TLR 884; *Cheney v Conn* (1968) ALL ER 77 (1968) 44 TC 217; *Anderawos Timber Trading Co. Ltd v FBIR* (1966) LLR 195, to the effect that the aid of English Courts' decisions can be invoked in interpreting tax laws in Nigeria where the expressions or terms are similar to those used in the English statutes.

[5] This resulted in the Aba Women's Riot of that year (1929) and which was a protest on the imposition of taxes on women.

[6] *Williams* (n 3).

affects their jurisdiction to promulgate tax laws and collect taxes. The fiscal legislation passed by the National Assembly allocates the powers of collection to the FGN, state and local governments. Fiscal legislation cover the field but there are other miscellaneous taxes for which State Houses of Assembly can legislate.[7]

## III. DIVISION OF POWERS TO COLLECT TAXES BY THE THREE-TIERS OF GOVERNMENT AND DISPUTES ARISING THEREFROM

For ease of reference, it is imperative to reproduce Parts I, II and III of the Schedule to the Taxes and Levies (Approved List for Collection) Act 1998:[8]

Part I
Taxes to be collected by the Federal Government:

1. Companies' income tax.
2. Withholding tax on companies, residents of the Federal Capital Territory, Abuja and non-resident individuals.
3. Value added tax.
4. Education tax.
5. Capital gains tax on residents of the Federal Capital Territory, Abuja.
6. Bodies corporate and non-residents individuals.
7. Stamp duties on bodies corporate and residents of the Federal Capital Territory Abuja.
8. Personal income tax in respect of –
    a. Members of the armed forces of the federation
    b. Members of the Nigerian Police Force
    c. Residents of the Federal Capital Territory Abuja[9] and
    d. Staff of the Ministry of Foreign Affairs and non-resident individuals.

Part II
Taxes and levies to be collected by the state government:

1. Personal income in respect of –
    a. Pay-As-You-Earn (PAYE); and
    b. Direct taxation (self-assessment).
2. Withholding tax (individuals only).
3. Capital gains tax (individuals only).
4. Stamp duties on instruments executed by individuals.

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[7] Such as in the areas of tourism and hospitality as distinguished from tourist movements.
[8] (TLALC) No. 28 LFN 2004.
[9] Federal Capital Territory Internal Revenue Service Act Cap.10 (2015) is now in charge of personal income taxes of the residents of FCT.

5. Pools betting and lotteries, gaming and casino taxes.
6. Road taxes.
7. Business premises registration fee in respect of –
    a. Urban areas as defined by each state, maximum of-:
        i. N10,000 for registration and
        ii. N5,000 per annum for renewal of registration, and
    b. Rural areas –
        i. N2,000 for registration, and
        ii. N1,000 per annum for renewal of registration.
8. Development levy (individuals only) not more than N100 per annum on all taxable individuals.
9. Naming of street registration fees in state capital.
10. Right of Occupancy fees on lands owned by the state government in urban areas of the state.
11. Market taxes and levies where state finance is involved.

Part III

Taxes and levies to be collected by the local government:

1. Shops and kiosks rates.
2. Tenement rates.
3. On and off liquor license fees.
4. Slaughter slab fees.
5. Marriage, birth and death registration fee.
6. Naming of street registration fee, excluding any street in the state capital.
7. Right of occupancy fees on lands in rural areas, excluding those collectables by the federal and state governments.
8. Market taxes and levies excluding any market where state finance is involved.
9. Motor park levies.
10. Domestic animal license fee.
11. Bicycle, truck, canoe, wheelbarrow and cart fees, other than a mechanically propelled truck.
12. Cattle tax payable by cattle farmers only.
13. Merriment and road closure levy.
14. Radio and television license fees (other than radio and television transmitter).
15. Vehicle radio license fees (to be imposed by the local government of the state in which the car is registered).
16. Wrong parking charges.
17. Public convenience, sewage and refuse disposal fees.

18. Customary burial ground permit fees.
19. Religious places establishment permit fees.
20. Signboard and advertisement permit fees.

It is appropriate to examine the jurisdictions/powers vested on the FGN, State and local governments to collect taxes pursuant to the enacted legislation. The FGN used its 'Federal-Might' to bulldoze its way and unified taxation through the use of the doctrine of covering the field in the federating structure. The three organs of the FIRS, SBIRS and LGRC respectively have jurisdictions/powers of collection allocated to them by fiscal statutes. These separation of jurisdictional powers stand and encroachments, violations, infringements, interferences and intrusions are prohibited. The effects are discussed below. Section 1 of the TLALC Act provides that:

> Notwithstanding anything contained in the Constitution of the Federal Republic of Nigeria, as amended, or in any other enactment or law, the federal government, state government and local government shall be responsible for collecting the taxes and levies listed in parts I, II and III of the Schedule to this Act respectively.

In *Attorney General of Ogun State v Aberuagba*,[10] the issue was the taxing powers of the FGN under item 38 of the Exclusive list 1979 Constitution which provides for the taxation payable in respect of the sales or purchases of commodities. The question was whether the Ogun State Sales Law 1982 is valid or inconsistent with the section 5(4) of the 1979 Constitution. Under section 3(1) of the Ogun Sales Tax Law, all products brought into the state, that is, supply of goods and services are taxable. It was contended that the FGN encroached on the jurisdiction of the States' legislative power of taxation.

The Court held that since the sales tax law imposed on the goods brought into the state, which as a matter of fact, were within what is called inter-state trade and commerce, it is within the exclusive jurisdiction of the FGN and therefore invalid. The Supreme Court held that any tax as used in the provision, which empowers the state to impose tax on all matters in the concurrent and residual matters, can only be exercised subject to the rule of inconsistency under section 5(4) of the CFRN 1999 and the doctrine of covering of the field, and since the FGN had enacted law on the concurrent list, that enactment forecloses the ability of the state government to make law on the same issue. While this case appears faultless, the implication of it is that the FGN can use the doctrine of

[10] (1997) 1 NRLR (Pt 1) 51, 55-56; (1985) 2 NWLR (Pt 8) 395, 405.

covering of field to encroach and usurp legislative powers of other components units, but the states and local governments cannot do so on that of the former.

The implication of the above case is that the FGN can usurp legislative powers of other components States but the State and local governments may not likely do so on the powers of the FGN. The court years ago held that the FGN should not usurp the legislative powers of the state governments. In *Manufacturers Association of Nigeria v Attorney General of Lagos State*,[11] the court held that Lagos State Sales Tax Law (1994) concerns intra-State (not inter-State) trade and that it is preserved by section 315(a)&(d) of the CFRN 1999. Lagos State has residual power to legislate on intra-State trading activities and commerce within Lagos State. This important case was nullified on appeal. There is a recent judicial restatement of the doctrine of the covering of the field in taxation jurisprudence. In *Attorney General of Lagos State v Eko Hotels Limited & FBIR,*[12] the Supreme Court of Nigeria held that the impositions of Value Added Tax (VAT) and Sales Tax simultaneously, violates the double taxation principle prohibited and forbidden by the law. It was emphatically held that:

> VAT is an existing law by virtue of section 315(1) of the 1999 Nigerian Constitution and since VAT has covered the field on the subject of Sales Tax, it therefore prevailed over Lagos Sales Tax (Schedule Amendment) Order 2000. I am in complete agreement with the learned counsel for the 1st and 2nd Respondents that not only do both legislations cover the same goods and services, they are also targeted at the same consumer. The tax has already been collected by Eko Hotels Limited pursuant to VAT Act. When disputes arose as to which of the two claimants (FBIR or LSBIR), the tax collected, should be remitted to, it rightly approached the court for direction. There is no doubt in my mind that it would amount to double taxation for the same tax to be levied on the same goods and services, payable by the same consumers under two different legislations.[13]

While the above two cases appear faultless, the implication of it is that the FGN can use the doctrine of covering of field to indirectly encroach and override on legislative powers of other component States but the States and local government cannot do likewise. The above principle is now limited to areas where the Federal Government could legitimately legislate and basically not in respect of residual local matters peculiar to States by virtue

[11] (2004) 13 WRN 116, 122-127.
[12] (2018) 31 TLRN 1, 9.
[13] ibid (Kekere-Ekun JSC).

of residual legislative powers reserved for the States' Houses of Assembly such the regulation, registration, classification and grading of hotels, motels, guests house, restaurants, travels, tourists' agencies and hospitality.[14]

## IV. RATIONALITY OF UNIFORM TAXATION – ENACTMENT OF TAXES AND LEVIES (APPROVED LISTS FOR COLLECTION) ACT 1998

The rationality of the uniform taxation laws is very vital not only to prevent multiplicity and duplicity of taxes but also to provide guide for all the components States in the Nigerian federation. Uniform taxation has been justified in *Eti-Osa Local Governement v Jegede*, where the Court of Appeal held that 'to leave taxation at large at the whim and caprice of the different tiers of government would expose the entire citizenry to undue, multiple and over lapping taxes and levies.'[15]

It is in view of the above philosophy that the National Assembly is conferred with the powers to make laws for the peace and good governance of the country, including the powers to make laws for the taxation of stamp duties, income, profits and capital gains,[16] by limited liability companies. The Federal Board of Inland Revenue (FBIR) is charged with the responsibility of administering these forms of taxes imposed on limited liability companies.

In exercise of its legislative powers, the National Assembly made tax laws for the entire country in specific areas, it promulgated the Taxes and Levies (Approved List for Collection) Act 1998 to avoid conflicts arising from encroachments by the FGN, state and local governments inter-se, in their areas of jurisdiction to exercise legislative powers, that is, the enactment of tax laws and the exercise of the jurisdiction to collect various taxes.

## V. STATE GOVERNMENTS' ENCROACHMENT ON THE POWERS OF LOCAL GOVERNMENT TO COLLECT TAXES

In the areas of collection of taxes, state governments via SBIRS often times encroach on the jurisdiction of local governments to collect stamp duties relating to statutory powers of local government council (LGC). In *Knight*

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[14] *Minister of Justice & A-G Federation v A-G Lagos State* (2013) TLRN 55, 61-66; (2013) 16 NWLR (Pt 1380) 249 (the Supreme Court of Nigeria held that Lagos State and other component states have jurisdiction to legislate over tourisms and hospitality matters within their locality (federal government's power is limited to tourists traffics of foreigners/tourists coming into and out of Nigeria).

[15] (2007) 10 NWLR (Pt 1043) 537, 559 (Dongban-Mensem JCA); *Mobil Producing (Nig) Unlimited v Eleme Local Government Rivers State* (2004) 10 CLRN 99 (Nwodo J).

[16] CFRN 1999 s 4(1), (2), (3), (4) & (5); Exclusive Legislative List, items 58 & 59.

*Frank & Rutley Limited v Attorney General of Kano State*,[17] where the issue was whether state government has concurrent competence with LGC to embark on property assessments designed to eventually be used as yardstick for collection of rates. KFR was paid consultancy fees up front and after the consultants performed part of rating valuation. KSG terminated the agreement. The court held that by virtue of section 7(5) and Fourth Schedule of the Constitution and Kano Local Government Law No. 5 (1977) that only local government authorities could enter and execute this type of contract and KSG therefore acted ultra-vires. The Court of Appeal upheld the decision by a majority of 4 to 1.

The Supreme Court of Nigeria also affirmed the views of the two lower courts and held that since the assessment and levying of rating on private houses or tenements was one of the functions of the LGC under the constitution and Kano State legislations, the present agreement contract with knight Frank firm was ultra-varies, void and unconstitutional in spite of the fact that the contract had been part performed by both sides and that it took Kano State Government 4 years to unilaterally terminate the contract.

## VI. STATE GOVERNMENTS' ENCROACHMENT ON THE FEDERAL GOVERNMENT'S POWERS TO COLLECT STAMP DUTY TAXES

In the stamp duties case of *Union Trust Limited v Attorney General of The Federation & Attorney General of Ogun State*,[8] P and another company (Agbara Estate limited) executed a deed of mortgage to secure loan of N4M and conveyed to P its landed property situated at Agbara village in Egbado South Local Government Area of Ogun State. P paid N5000 stamp duties on the trust deed to the FGN. At the point of the registration at the Land Registry in Abeokuta, Ogun State Stamp Duties Commissioner (OGSSC) demanded N20,000 stamp duties. P made the second payment in protest after all the entreaties failed to produce favourable result. It was held that OGSSC has no authority to collect the stamp duties in respect of limited liability companies. It must be stated that it is not only state government that encroach on the FGN stamp duties powers but the FGN also do likewise on individuals' resident outside the Federal capital Territory of Abuja.

Secondly, the provisions of section 4(5) of the CFRN 1999 is unambiguous to the effect that where any law made by the State House of Assembly is inconsistent with the provisions of an Act of the National

[17] (1998) 7 NWLR (Pt 556) 1, 10.

Assembly, the law made by the National Assembly shall prevail, and that other law shall to be extent of its inconsistency be void. Thus, the Rivers State Property Tax Law, which seeks to impose taxes outside the express provisions of the Taxes and other Levies (Approved List for Collection) Act – a new validly made by the National Assembly to regulate the collection of taxes between the three tiers of government – is null and void to the extent of its inconsistency. The provisions of Part II of the Schedule of the Taxes and Other Levies (Approved List for Collection) Act are clear and unambiguous and should be given their simple and ordinary meaning.

## VII. EXECUTIVE USURPATION OF THE POWERS OF THE NATIONAL ASSEMBLY TO ENACT TAX LAWS

The inevitable question is whether section 1(2) Taxes and Levies (Approved List for Collection) Act 1998 gives the Minister of Finance the authority to usurp the powers of the National Assembly to make tax laws for the Federation of Nigeria? This is a constitutional question that needs to be answered through litigation processes by the superior courts of records considering the fact that new items of taxes had been slotted into the approved lists by the ministerial/executive fiat rather than the authorized act of the legislature whose duty is to make laws for peace, order and good governance[18] including that of taxation[19] especially stamp duties, taxation of incomes, profits and capital gains[20].

The executive-made tax laws are thus: - National Information Technology Development Levy which has been added into Part 1 of the schedule to make it 9th in number. Similarly 13 new taxes have been added in Part II, such as Land Use Charge, Hotel/Restaurants/Events Centre Consumption tax, Entertainment tax, Environmental/Ecology fee or levy, Mining/Milling and Quarrying fee, Animal trade tax, Produce Sales tax, Slaughter/Abattoir fees, Infrastructure Maintenance charge/levy, Fire Service Charge, Property tax, Economic Development levy and Signage/Mobile Advertisement tax (jointly by the State and Local Government). Only one new tax – Wharf Landing tax has been added in Part III. Finally, an entirely new and strange 21 taxes have been created such as: a single inter-states roads sticker for all states, a single haulage payable at the point of loading in the state of departure and a single haulage fee payable at the point of discharge of goods which the States are required to set institutional structure to collect, wharf landing fee to be

[18] CFRN 1999 s 4(1).
[19] ibid, s 4 (2),(3),(4((a)&(b).
[20] ibid, Second Schedule, items 58 and 59.

collected by the State where there are facilities to administer such fees which may be jointly administered by the state and local government and proceeds from collection share in line with agreed proportion, a single parking permit sticker designed by the Joint Tax Board (JTB) and issued by the operators where vehicles are packed in course of their journey, Fire Service levy should be charged on business premises and corporate organizations only and the Federal Fire Service can only collect can only collect fire service levy in FCT and not in States and Road Worthiness Certificate fee should be collected by the State in which the vehicle operate and should be administered by Board of Internal Revenue in conjunction with appropriate agencies.

The attempt by the Minister of Finance to slot new taxes without the input and concurrence of the legislature constitutes encroachment on the power of the National Assembly to make laws including taxation. This lack of consensus and approval may create the problem of unenforceability because of the anticipated public opposition and outcry. No doubt, with the declining revenue attributable to oil glut, taxation would constitute major source of funding due to the declining government subventions but imposition of new taxes through executive fiat is an outright transformation of power to make subsidiary legislation into full law-making functions in breach of the doctrine of separation of powers. The Nigerian electorate entrusted this function to an elected member of National Assembly. The processes of law making is a tedious one involving first, second, third readings, committees' stages and public hearings whereby bills are debated and transformed into laws. In this respect, the Taxes and Levies Order dated 26th May 2015 recommended by the JTB and approved by the Minister would at best constitute a working paper which would undergo the normal legislative processes at the National Assembly or States' Houses of Assembly depending whether the subject matter is the exclusive, concurrent or residual list.

Tax law is statutory and it represents the policy power of the State. This power must be exercised only upon the provisions of a statutory enactment and consequently, a taxpayer can only be taxed pursuant to a clear legislative authority.[21] Fiscal legislation such as taxes which impose financial burden upon the subject must receive the approval of the Parliament. In *Williams v Lagos State Development and Property Corporation*,[22] the assignee of unexpired residue of a term of lease contested his liability to pay 5 percent of the consideration or valuation of

[21] *Williams* (n 3).
[22] (1978) 3 SC 11, 17-19.

the land leased by Defendant who purported imposed a levy on the strength of a letter setting out the policy of the corporation acting pursuant to Town planning Regulation, which stipulated a covenant to pay "outgoings of whatever description as implied in every building lease". The Supreme Court held the defendant could not unilaterally and arbitrarily impose such a tax under the guise of outgoings unsupported by any statutory authority and since such a charge was not otherwise payable, it was a transparent attempt to impose an illegal levy. The Supreme Court of Nigeria held that:

> The rule of law is that no pecuniary burden can be imposed upon the subject by whatever name whether tax, dues, rate or tolls except upon a clear and distinct legal authority established by those who seek to impose the burden.[23]

It is submitted the order made by the Minister would constitute no law at all. At best, it is a mere legislative proposal which the National Assembly would deliberate upon as a bill preparatory for its passage through all the stages of the law-making processes.

The true position is that the Minister as a member of the executive under the principle of separation of powers cannot transform the power to make subsidiary legislation into full-blown power to enact new substantive tax laws without the consent or concurrence of the Parliament as this would amount to ultra-vires. Critical examinations of some parts of the Order reveal many defects which could have been cured or streamlined through legislative surgery or scrutiny processes. The specific amounts of levies chargeable in respect of the National Information Development and Business premises in urban/ rural registration/renewal fees, are not stated.

## VIII. THE NULLIFICATION OF EXECUTIVE FIAT-MADE TAX LAW WHICH WENT BEYOND DELEGATED LEGISLATION

The inevitable question is whether section 1(2) of the Taxes and Levies (Approved List for Collection) Act 1998 gives the Minister of Finance authority to usurp the powers of the National Assembly to make tax laws for the FGN as per Taxes and Levies (Approved Lists for Collection) Order 2015? This is a constitutional question that has been answered through litigation processes considering the fact that new items of taxes had been slotted into the approved lists by the ministerial/executive fiat rather than the act of the legislature whose duty is to make laws including that of taxation. In accordance with our predictions, these taxes imposed through executive-made-fiat, have been declared ultra-vires, unconstitutional, null

[23] ibid 17-18 (Alexander CJN).

and void for infringement of the principle of separation of powers and its attempted transformation of the delegated legislative power into full-blown-law-making power in *Registered Trustees of Hotel Owners & Managers' Association Lagos State v Attorney General of the Federation & Minister of Finance*,[24] where the Claimants through originating summons challenged the Taxes and Levies Order 2015 made by Finance Minister – a member of the Executive Arm of the FGN as inconsistent with section 315 of the CFRN 1999. The Claimant alleged that Taxes and Levies Order 2015 made by Minister of Finance, went beyond delegated legislation permitted under section 1(2) of the TALALC Act 1998 and merited the status of law-making which the Constitution vested on the National Assembly. In a well-considered judgement, the Lagos State Court held that:

(i) the Claimants' locus standi is established as taxpayer because they have interest in the legislation which affects their business interests above that of ordinary Nigerians;

(ii) it is not a delegated legislation as it seeks to add, override the main legislation and has the same legal force as the Act itself. It is an amendment of the existing Act of the National Assembly, contrary to section 315 CFRN 1999.

It nullified the executive fiat-made-tax law and declared it:

(i) unconstitutional, null and void as it also violates section 4 CFRN 1999, and

(ii) that section 1(3) TALALFC Act 1998 (the particular section of the extant law which was interpreted as purporting to give the Finance Minister power), is inconsistent with section 1(3) CFRN 1999 and therefore null, void, unconstitutional and of no effect whatsoever.

**Commentary**: This case appears sound and faultless in principle. It is most unlikely that the Court of Appeal and Supreme Court would set it aside because the decision accords not only with common sense but with the jurisprudence of our tax laws and constitutional law, long ago established in our legal system.

[24] (2020) 52 TLRN 1, 5-10 (Faji J).

## IX. APPEALS TO HIERACHIES OF COURTS MUST BE COMPLETED BEFORE FIRS, SBIR, LGRC CAN SEAL-OFF TAXPAYER'S PREMISES TO RECOVER UNPAID TAXED AS AN ACCRUED DEBT

The summary objections must be resolved and concluded before appellate processes shall proceed to the hierarchies of courts. Also, the appellate processes must be completed prior to the enforcement of judgements via sealing-off the taxpayer's premises to recover tax debts.

Where the RTA has disallowed the objection to an assessment and issued Notice of Refusal to Amend (NORA), the tax statutes confer on the taxpayer, who is now aggrieved or dissatisfied, the right of appeal to the various hierarchies of the courts. If the taxes are the ones collectable by the any of 36 States, including Abuja FCT and the local government authorities (LGAs), the right of appeal exist and the Magistrates/Revenue Courts and States High Courts, shall have jurisdictions. If the taxes are the ones collectable by the FGN, the right of appeal to either Tax Appeal Tribunal or Federal High Court shall accrue to the taxpayer.

## X. DISPUTE BETWEEN STATE GOVERNMENTS AND TAX PAYERS OVER THE POWER OF HOUSES OF ASSEMBLY TO ENACT TAX LAWS

The court would grant a declaration that assessments based on tax whose jurisdiction is vested in another sphere of government, are ultra-vires for infringements of Law. In absence of the Liquidated Sums, this would create confusion because every state government would now impose arbitrary/oppressive sums as taxes - the very evil – the mischief which necessitated the passage of Taxes and Levies Act. The Courts would entertain application for judicial review on the grounds that the assessments are ultra–vires, irrational, procedurally deficient and unfair. This is also the position in *Thompson & Grace Investment Limited v Akwa Ibom State Government*,[25] where an attempt by Akwa-Ibom State Government to impose and recover the sum of N5, 650,000.00 as unpaid registration fees and renewal of business premises for the claimant's residential property building at Eket, was held without jurisdiction and ultra-vires because of the excess levy of N50,000.00 instead of N10,000 and N5,000.00 for renewal for Urban Areas are outrageous and were held unconstitutional, null, void and of no effect whatsoever.

The Property Tax Law of Rivers State was passed on 1st January 1995. It contravenes part II Taxes and Levies (Approved Lists For Collection) Act 1998 and any assessment base on it, is a valid ground of objection because RVIRS (Internal Revenue Service) can no longer collect Property Rates Tax

[25] (2010) 5 TLRN 94, 97-101 (Ebienyie J).

which is exclusively preserved for the local government because the Property Tax Law 1995 had impliedly been repealed[26] by Part II Taxes and Levies (Approved Lists For Collection) Act 1998 which vest its collection on the local government authorities by virtue of Part III.[27] From the above stated division of the legislative powers, Rivers States House of Assembly no more has power to promulgate Property Tax Laws. This is similar to the 'Urban Development Tax' which is another form of tenement rate[28] which was nullified because it constituted double taxation, had respectively resurfaced in the lists of taxes promulgated through executive fiat, without the consent and approval of the legislators.

In *Attorney General of Cross River State v Ojua*,[29] the objection raised by the tax payer on the assessment served on him, was on the ground that the Urban Development Tax Law usurped Local Government powers to levy tenement rates on privately owned houses or tenement and that its assignment to the Cross Rivers State Government (CRSG) was upheld by the Court of Appeal on the grounds that the State House of Assembly lacked legislative competence to enact such law.

The Urban Development Tax Law of Cross Rivers State is another name for Property Tax, and strictly speaking is another form of Tenement Rate within the exclusive jurisdiction of the Local Government taxation and it nullified by the court because it violated the prohibited double, had now resurfaced into our statues books, without legislative inputs and approval. The court would grant a declaration that assessments based on tax whose jurisdiction are vested in another sphere of government, are ultra-vires[30] for infringements of Law. The superior courts may entertain application for judicial review on the grounds that the assessments are ultra-vires, irrational, procedurally deficient and unfair.[31]

Similarly, the sales tax – another form of Consumption Tax similar in characteristics and nomenclature to value added tax,[32] *Attorney General of Lagos State v Eko Hotels Limited & FBIRS*,[33] and Social Services Contributory Levy which the courts nullified due to the violation of the

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[26] *National Inland Waterways Authority v Shell Petroleum Development Company Ltd.* (2005) 8 CLRN 132,132 (Federal High Court Port Harcourt) (Faji J).

[27] *Eti-Osa Local Government v Jegede* (2013) NRLR 99 (CA), *Thompson & Grace Investment Ltd v Government of Akwa-Ibom* (2010) 3 TLR 94, 95-98 (High Court).

[28] *A-G Cross Rivers State v Ojua* (2011) 5 TLRN 1, 56 (CA).

[29] (2011) 5 TLRN 1, 56 (Akaahs JCA).

[30] *Thompson & Grace Limited v Government of Akwa-Ibom State* (2010) 3 TLRN 96 (High Court Eket); *A-G Cross Rivers State v Ojua* (2011) 5 TLRN 1, 56 (CA).

[31] I Saunders, *Taxation Judicial Review and other Remedies* (1996) 122-332.

[32] *AG Lagos v Eko Hotels Limited & FBIRS*.

[33] (2018) 31 TLRN 1, 9.

principles of double taxation on the face of Personal Income Tax Act 1993 by the courts had also resurfaced in the Taxes and Levies (Approved Lists Collection Order 2015 without the proper legislative surgical operations through meticulous cleansing debates, harmonization and panel-beating involved in the legislative processes.

The notorious and bitterly resented Social Services Contribution Levy (SSCL) 2010, which the High Court of the Rivers State invalidated, had all reappeared in the lists of approved taxes and levies under Taxes and Levies (Approved Lists Collection Order 2015. The inevitable question is whether SSCL 2010 shaded-off its offensive ingredients prior to its being reintroduction or re-enactment into the statute book. The answer is in the negative because it could not be competently done without debate by members of the State House of Assembly. This was the justification for which a Lagos State High Court nullified the Taxes and Levies (Approved Lists Collection) Order 2015. From the division of the legislative powers stated above, it would appear that State Houses of Assembly have no power to promulgate tax laws except in a limited circumstance.

The attempt to enact the Social Services Contributory Levy 2010 of Rivers State was classified as a double taxation because from the content of the legislation as noted in *IHRHL v. Attorney General Rivers State,*[34] it ran contrary to the Personal Income Tax Act (1993) as amended in 2011. The offending part of the law deserves critical examination. Section 15 (1) and (2) of the Social Services Contributory Levy 2010 provides that the remuneration of: (i) a person resident in the state, (ii) an employee in the state civil or public service, (iii) an employee in the Federal Public Service resident in the State, (iv) a person engaged in any trade or vocation as self-employed and operating in Rivers State, (v) an employee in the Local Government Service, and (vi) of employees of a company or an organisation operating in the state, shall be deducted as prescribed in the levy and remitted to the Board of Internal Revenue.

The above legislation was challenged in *Institute of Human Rights & Humanitarian Law v Attorney General of Rivers State, Rivers State House of Assembly & Rivers State Board of Internal Revenue*,[35] where the Claimant as a taxpayer challenged the competence of Rivers State House of Assembly it as it runs contrary to the double taxation principle in view of Personal Income Tax Act. The court nullified the Social Services Contributory Levy 2010 as double taxation overburdening resident taxpayers. The court emphatically noted that:

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[34] (2014) 14 TLR 9, 21, 46-47 High Court Port Harcourt Rivers State (Okpara J).
[35] ibid.

> After a careful consideration of Part II, I find that RVSG cannot collect the Social Services Contributory Levy through via the SSCL Law 2010. The power of 2nd Defendant (RVSHA) to make laws on taxes and levies are subject to section 4 of Nigerian Constitution 1999, item 8, Part II of the same Constitution and Part II of the Taxes and Levies (Approved List for Collection) Act. I therefore hold that the 2nd Defendant (RVSHA) has no power to enact laws on taxes and levies outside Part II of the Taxes and Levies (Approved List For Collection) Act and item 8 Part II of the 2nd Schedule of the Constitution. The SSLC Law enacted by the RVSHA is inconsistent with …Act and therefore void under section 4(5) Nigerian Constitution 1999(as amended). Looking at the Part II of Act…the only levy allowed is 'Development Levy' for individuals only which is not more N100 per annum…the SSCL cannot by any stretch of imagination be translated to mean development levy.[36]

Curiously the Counsel for the claimant over-sighted the possibility to ask the Honourable Court for the refund of Social Services Contributory Levy Taxes which the 3rd Defendant unlawfully deducted from the salaries of the civil servants and other categories of employees in Rivers State pursuant to the invalidated law enacted without legislative jurisdiction? The 3rd Defendant has no right to collect taxes pursuant to the law which contravened the provisions of the CFRN 1999. It is submitted that the Rivers State Board of Internal Revenue should grant them tax credits in arrears to off-set subsequent future tax liabilities. This is the most logical conclusion. The taxes unlawfully collected are recoverable through time consuming and very difficult refund processes[37]. Strictly speaking, overpayment of taxes are recoverable and could be used as a set-off against future liabilities and tax credit could be granted on this basis[38]. Strictly, interests are claimable. In *FBIR v. Integrated Data Services Limited*,[39] claimant sued for N15, 2002,397.00 as unremitted Value Added Tax (VAT) plus penalty and interests thereon because D failed to deliver monthly VAT returns for period from January 1994 to October 1999 – 43 months instead of monthly as required by section 12(1) of the VAT Act. The trial court gave judgement for the principal sum but refused the claim for interests and penalty but the Court of Appeal granted it by virtue of sections 15 and 31 VAT Act[40]. If interests are claimable by the RTA for late payment of taxes[41],

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36 ibid 46-47 (Okpara J).
37 Board of Internal Revenue Law No.12 (2012 Rivers State) s 21(2)(3).
38 ibid.
39 (2009) 8 NWLR (Pt 1144) 615.
40 ibid 620-624.
41 *Lagos State BIR v Mobotson Ventures (Nig) Limited* (2012) 6 TLRN 141 (Adebiyi J).

there is no justification why the taxpayers could not be entitled to claim interests for taxes unlawfully collected pursuant to unlawful, illegitimate legislation. This equivalent to overpaid taxes.

The position in Zimbabwean jurisdiction, supports this view. In *Ellis v Commissioner of Taxes*,[42] the Commissioner of Taxes (COT) assessed the taxpayer for capital gains tax on expropriated shares. The tax demand was paid but the provision of the legislation was subsequently held to be invalid by the Supreme Court of Zimbabwean as being contrary to the Constitution. COT thereafter reimbursed the bulk of the tax paid. The estate of the taxpayer brought an action to require the payment of interests on the tax paid from the date of payment to the date of repayment. The COT held it was immune from the claim of interests but the High Court held that interests were claimable only from the date when the Supreme Court nullified the legislation. On appeal the Supreme Court of Zimbabwe held that where a demand for tax is made pursuant to invalid legislation, the taxpayer has the right to recover the tax paid together with the interests from the date of the payment and there was no immunity which prevents the court from payment of interests. The court observed thus:

> [T]he view that there is in general a right to restitution of monies paid upon an ultra-vires and illegal demand, and so a right to the recovery of interests thereon, is both attractive and compelling. For such principal payment would have been made either in consequence of a perceive presumption on the part of the payer of the constitutional validity of the demand and the holding out of the such legality by the legislature, or on account of the prospect of the payer being subjected to penal interests were his opinion of the illegality of the demand being ruled to be incorrect. It matters not which it be, since payments made under unconstitutional legislation cannot be deemed voluntary. In short, an ultra vires demand alone by a government body provides a ground for restitution. It operates outside the field of and focuses on the preposition of the government body as payee rather than circumstances of the payer.[43]

This jurisprudential line of thinking also draws support from the Malaysian jurisdiction. In *Pelangi Limited v Ketua Negeri*,[44] the Inland

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[42] (1994) 1 Zimbabwe LR 422, 435.

[43] ibid 435 (Gubbay CJZ); see also *COT v F Kristiansten Limited* 57 SATC 238, *BAT v COT* 57 SATC 238 (Zimbabwean cases) and *KNA Insurance & Investment Brookers Limited (In Liquidation) v. South Africa Revenue Service* 71 SATC 155; *Commissioner for Inland Revenue v First National Industrial Bank Limited* 52 SATC 224; *Sage Life Limited v Minister of Finance* 66 SATC 181. These are South African cases that support the proposition that interests should be paid to taxpayers for overpayment of taxes.

[44] (2012) 1 MLJ 825, 826.

Revenue (Respondent) had subjected gains arising from a compulsory land acquisition to income tax and consequently had retained the applicant's tax refunds. The applicant successfully applied for judicial review and obtained a declaration that the tax was unlawful and sought a refund of RM2, 360,723.62 together with interests. The Internal Revenue contended that mandamus cannot be granted against it as a public body and that the taxpayer is not entitled to the refund. It was held that interest was the consequent to unlawful imposition of tax; the Internal Revenue unlawful assessment did not follow the established principle.[45] The court was definite that since the tax was unlawful, the IRS must refund it with interests and the section 111 of the Income Tax 1967 relied upon by Internal Revenue concerns overpayment but the case here was unlawful payment.

The same line of reasoning similarly stated in *Power Root (Malaysia) Limited v Director General Customs*,[46] where the applicants manufacture drinks (goods) and the Respondent classified it as Sales Tax of 10 percent instead of 5 percent. The applicant paid and the appeals to High Court and Court of Appeal were in their favour. Applicant wrote to the Respondent demanding refund of the 5 percent was refused and they filed consequential relief. The court held it was an injustice and a breach of fundamental constitutional principles to permit the respondent to retain the illegally collected tax. The court was emphatic that the it was not functus officio when the applicant filed consequential relief and discountenanced the assertion by the Respondent that it was relieved of the obligation to make restitution because the illegally collected taxes had been 'passed on' to the end users as unfounded. The court further stated that:

> the Respondent had no right to retain illegally collected taxes and the applicants should have recourse to restitution as of right. The defence of 'passing on' was rejected because it was inconsistent with the basic principles of restitution law, it was economically misconceived and the task of determining the ultimate burden of tax was exceedingly difficult and constituted as an inappropriate basis for denying relief. The court had no jurisdiction to convert the originating motion, let alone interlocutory application such as filed by the applicant into writ of summons. It was clear when the matter was disposed of at the High Court and at Court of Appeal; there was no longer any cause of action or matter to be converted into a writ.[47]

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[45] *Ketua Negeri v Penam Realty Limited* (2006) 3 MLJ 597; (2006) 2 CLJ 835.
[46] (2014) 2 MLJ 271, 252.
[47] ibid 26, 29-30 (Yusuf J).

It is submitted that the Rivers State Board of Internal Revenue refund with interests, the amount illegally collected as tax on a legislation which has been nullified. Since it is usually too difficult to obtain refund from the government treasury, RVSBIR should at best grant them tax credits in arrears to off-set subsequent future tax liabilities. This is the most logical conclusion and this sound and faultless line of jurisprudential reasoning have support from cases in South African[48] jurisdiction.[49]

In *KNA Insurance & Investment Brokers Limited*,[50] where the financial records of the taxpayer reflected a fictitious profit and a fictitious dividend payment which has been entered into the financial records to cover fraudulent course of conduct of the director. Provisional tax was paid based on the fraudulent financial information presented to the company's tax advisor. The court held that the provisions of Income Tax Act repayment of provisional tax overpaid were not applicable as no tax had ever been paid and that the common law principle applied and that the stamp duty paid in respect of the amount described as 'dividend' had never been due and more interest was payable but only from the date upon which it was agreed that the amount was repayable. The State House of Assembly cannot enact the Social Services Contributory Levy Law, N0.9 of 2010 by virtue of the Taxes and Levies (Approved List for Collection) Act and the CFRN 1999.[51] They do not have the capacity to legislate on taxes and levies outside the provisions of Part II of the Schedule of the Taxes and Levies (Approved List for Collection) Act.

The powers of the State House of Assembly to make laws on taxes and levies are subject to section 4(5) of the CFRN 1999, Item 8, Part II, Second Schedule of the Constitution and Part II of the Taxes and Levies (Approved List for Collection) Act. The Social Services Contributory Levy Law enacted by the Rivers State House of Assembly is inconsistent with the Taxes and Levies (Approved List for Collection) Act and therefore void under section 4 (5) of the CFRN 1999. Looking at 'Part II' of the of the Schedule of the Taxes and Levies (Approved List for Collection) Act, the only levy closest to the levies provided for in the Social Services Contributory Law is 'development levy for individuals only' which is not more than ₦100 per

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[48] *Commissioner for Inland Revenue v. First National Industrial Bank Limited* 52 SATC 224, where stamp duties, which were not lawfully due but had been paid under protest to avoid penalty, were held refundable with interests.

[49] *Bat v COT* 57 SATC 282; *COT v Kristiansen Limited 57 SATC 238*; *KNA Insurance & Investment Brokers Limited v South African Revenue Service* 71 SATC 155, and *Commissioner for Inland Revenue v First National Industrial Bank Limited* 52 SATC 224 and *Sage Life Limited v Minister of Finance* 66 SATC 181.

[50] 71 SATC 155.

[51] *IHRHL v A-G Rivers State* (n 34).

annum on all taxable individuals[52]. The social services contributory levy cannot by any stretch of imagination be translated to mean the same as development levy. Members of the States House of Assembly swore to uphold and defend the Constitution, therefore the court should not on the structure and background of locus standi allow them to thrive in illegality by making a law that is grossly inconsistent with the Constitution they swore to defend.[53]

The only power reserved for the House of Assembly is to promulgate law relating to the regulation of tourism[54] (as opposed to tourists' traffic), hotels, motels and other matters peculiar to their locality[55] It also has power is to pass laws regulating collection of taxes in respect of their areas of jurisdiction. It is on this basis that the Rivers State Board of Internal Revenue Law No. 12 of (2012) appears valid because it is a law which seems to consolidate and elaborate the functions of the State Board of Internal Revenue, Rivers State Internal Revenue Service, the Local Government Revenue Committee and the State Joint Revenue Committee and specified for the collection and administration of Revenue and Taxation and matters reasonably incidental thereto.

## XI. DISPUTES BETWEEN FEDERAL AND STATE GOVERNMENTS OVER THE ENACTMENT OF TAX LEGISLATION AND TAX COLLECTION

The FGN, like others in different parts of the world, has plenary powers to impose any form of tax legislation and at whatever rate it deems appropriate[56]. The National Assembly is empowered to make laws for peace, order and good government of the Federation or any part thereof[57]. This includes tax laws for and on behalf of the entire country in respect of items specified in the exclusive and concurrent legislative lists. In respect of the powers to promulgate tax laws, it appears to be the exclusive preserve of the National Assembly[58] to enact laws governing taxation such as customs and excise duties[59], stamp duties[60], taxation of incomes, profits and capital gains[61], except as otherwise prescribed by the Constitution. In

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[52] ibid.
[53] ibid.
[54] *A-G Federation v A-G Lagos State* (2013) 16 NWLR (Pt 1380) 249, 383.
[55] AO Bello, 'Legislative Powers to Regulate Hotels and Tourism Business' (2014) 32 *Journal of Private and Property Law* 148-154.
[56] CFRN 1999 s 4.
[57] ibid, s 4(2) & (3).
[58] ibid, Second Schedule, Exclusive Legislative List, part 1.
[59] ibid, part 1, item 16.
[60] ibid, part 1, item 58.
[61] ibid, part 1, item 59.

fact, taxation law making is a federal matter under the items 58 and 59 exclusive legislative list which empowers the National Assembly to make tax laws, impose any form of tax for any purpose and at whatever rate under section 4(1) & (2) of the CFRN 1999. The general rule is that the CFRN 1999 is the 'fons juris' - the source of all laws from which all other laws flow and derive their validity, it is the supreme law of the land - the alpha and omega of the judicial system - it is supreme over and above all other statutes, every Act of the National Assembly or State Houses of Assembly, all other legal norms must conform and not in conflict with the Constitution as the grundnorm.[62]

## XII. STATE GOVERNMENTS' POWER TO PRUMULGATE TAX LAWS RELATING TO TOURISM, SUNDRY MATTERS IN RESIDUAL AREAS PECULIAR TO THEIR LOCALITY

As is demonstrated, the litigation mechanism, that is, resort to courts, is the most durable means of resolution as it provides precedents for taxation jurisprudence, which would guide tax administrators, tax practitioners and tax teachers in subsequent similar situations. Some of the residual areas reserved for a State House of Assembly is to promulgate laws that relate to the regulation of tourism[63] (as opposed to tourists' traffic). The regulation, registration, classification and grading of hotels, motels, guests house, restaurants, travels, tourists' agencies and hospitality and other matters peculiar to their locality are reserved.[64] The States' Houses of Assembly have power to promulgate taxation laws regulating these residual areas.

Similarly, by virtue of section 4(7) of the CFRN 1999, the Houses[5] of Assembly[6] of the 36 States of Nigeria[7] respectively have powers to make laws on matters listed on concurrent lists, but according to items 7 & 8 of the Part II of the Second Schedule, they cannot make laws in respect of stamp duties even though the collection and administration of taxes on capital gains incomes, profits, documents or transactions by way of stamp duties, etc., on individuals other than companies; shall be carried out by the government of that particular state, that is, the authority of the SBIR.

In the celebrated case of *Minister of Justice & Attorney General of the Federation v Attorney General of Lagos State*,[65] the FGN challenged the Lagos State's Hotel Licensing Law (2003), its amendment (2010) and Hotel Occupancy & Restaurant Consumption Law 2009, as invalid by reason of

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[62] *A-G Abia State v A-G Federation* (2006) 16 NWLR (Pt 1005) 265 (Tobi JSC).
[63] *A-G Federation v A-G Lagos State* (2013) 16 NWLR (Pt 1380) 249, 383.
[64] Bello (n 55).
[65] (2013) 12 TLRN 55, 61-66 (2013) 16 NWLR (Pt 1380) 249 (SC).

their inconsistency with the provisions of Nigerian Tourism Development Act 1992 (NTDA which set up NTD Corporation) on the ground that Item 60 Second Schedule Part 1 Exclusive List of the CFRN 1999 vests on the National Assembly powers to make laws on tourism as a whole which by extension invalidates the Hotel Occupancy and Restaurant Consumption law of Lagos State. LASG opposed the action contending NTDC is only responsible for rendering technical advice to States' Governments in the field of tourism and to make laws for the regulation, registration, classification and grading of hospitality and tourism enterprise.

The NTDA also provides for the establishment of States Tourism Board for each State and Local Government Tourism Committee for each Local Government in each State. Section 4 of the CFRN 1999 divides the legislative powers between National Assembly for the federation and Houses of Assembly for the States into the Exclusive, Concurrent and Residual Legislative Lists. LASG contended that 'hospitality and tourism enterprises' not being contained in the exclusive and concurrent lists, are residual matters for the LASG to legislate on. From the inception of the CFRN 1999, the FGN did not attempt to repeal or modify NTDA of 1992, which the FGN continues to enforce in Lagos State, by seeking to regulate, register and grade the hospitality and tourism facilities. The LASG further maintained that NTDC Act is no more valid as regards the subject matter competence – 'tourist traffic' under section 60(b) of the Exclusive Legislative List only concerns the movement of foreigners coming into Nigeria, as tourists may be regulated by ways of visas and the limited periods that tourists may remain in the country. That power does not extend to regulation, registration, classification and grading of hospitality enterprise and therefore the NTDC Act is unconstitutional, null and void.

The Supreme Court of Nigeria unanimously upheld the contention of LASG and held that the powers of National Assembly to make laws on tourism within section 6O(1)(b) of the Second Schedule to the CFRN 1999 is limited to tourists' traffic which alludes ingress and egress of tourists from other countries, international visitors or foreigners. These include any one who moves from place to another even within Nigeria for site seeing, relaxation and possibly for cultural purposes. Their Lordships were emphatic thus:

1. That within the context of section 60 (1)(b) it connotes a tourist as an international traveller who travels to another country for the purpose of sight-seeing, who must obtain visa to visit such country including Nigeria and tourists traffic calls for the exercise of the

functions of immigration department of the ministry of internal affairs as governed by the Immigration Act[66].

2. That matters pertaining to the regulation, registration, classification, grading of hotels, motels, guests' houses, restaurants, travel and tour agencies and other hospitality and tourism related establishments are not matters within the exclusive legislative lists and National Assembly for the FGN lacks the constitutional vires to make laws outside its legislative competence for these residual matters reserved for the State House of Assembly. It is an encroachment on exclusive constitutional authority conferred on the State House of Assembly to legislate on residual list.
3. The three laws passed by the Lagos State House of Assembly are intra-vires and valid under section 4(7) of the CFRN 1999 because these matters are neither in exclusive nor on the concurrent legislative lists.
4. That the doctrine of the covering of the fields has no application on the laws passed by National Assembly on exclusive legislative lists. It is only applicable where the FGN has validly passed laws pursuant to the subject matter on the concurrent lists. The NTDC Act was not validly made because the National Assembly has no legislative competence over the regulation of hotels, motels and similar tourism facilities in Laos State since they are residual matters. The NTDC Act was not validly made and there is therefore no inconsistency.
5. That there is no connection between tourist traffic and regulation of hotels, motels and other hospitality and tourism establishments as tourists' traffic is in exclusive list because of its national and international implications. All over the world, regulation of tourists' traffic is handled exclusively by the National Government. The practice in a Federation is to vests in the regional government the power to regulate hotels and similar establishments[67].

**Commentary**: The decision of the Supreme Court is commendable for the succinct analysis of the distinction between tourist traffic which concerns foreigners who need to comply with immigration rules in order to have ingress and egress - come into and out of Nigeria exclusively vested on the FGN and tourism as a business enterprise which concerns hotels and hospitality as residual local matters vested in legislative jurisdiction of Lagos State and all other component States of Nigeria.

[66] ibid 90-92 (Galadima JSC).
[67] ibid 97-105 (Galadima JSC).

This judicial pronouncement from the apex court has doused unnecessary rivalry between the FGN and component States' governments[68] over perceived encroachment. The case clarified legislative sharing powers between the FGN and States predicated certain principles, namely, that the FGN's power should be limited to maters of general interests to the nation as a whole,[69] while the States should concentrate on matters within their locality. This case is faultless because the Supreme Court recognised earlier that the Houses of Assembly have residual legislative competence to enact laws to regulate urban and regional planning of their respective locality.[70]

## XIII. DISPUTE BETWEEN FEDERAL GOVERNMENT AND TAX PAYERS

The resolution of the disputes between the Federal Government and individual Taxpayer is through the public purpose litigation declaratory reliefs. Public interests' litigation should be encouraged amongst lawyers, accountants, economists and business men/women who are versed in the interpretation of taxation laws and other fiscal legislation particularly members of CITN in their personal capacity. Where the government funds are being misused or channelled into wrong expenditures, an individual taxpayer can initiate litigation against that particular government department, ministries and parastatals to correct the anomaly. The tax payers' right to challenge irregular expenditure of public funds was recognised in *Gani Fawehinmi v President of Nigeria*,[71] where the taxpayer challenged the president's payment of salaries and allowances in dollars – $247,000 and $1117,000 respectively – to certain categories of ministers outside what was approved by Revenue Mobilization, Allocation and Fiscal Commission (RMAFC), that is, ₦794, 085, as violation of sections 15, 84, 124 and 153 of the CFRN 1999 and Political, Public and Judicial Office Holders (Salaries and Allowances) Act.

The High Court had dismissed the suit holding that the claimant was a busy body who had no locus standi to challenge the government's expenditure. The Court of Appeal reversed the judgement and held that the taxpayer has locus standi to sue because it will definitely be a source of concern to any taxpayer who watches the funds he contributed or is

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[68] Bello (n 55).

[69] MO Adediran, *Critical Examination of the Constitutional Provisions on Legislative Powers of the Federal & States*, quoted in DA Ijalaye, *The Imperatives of Federal/States Relation in a Fledgling Democracy for Nigeria* (NIALS 2001) 1, 2-3; see also JO Akande, 'The Future of Federalism in Nigeria' (1985) 1 *Nigerian Current Law Journal* 63-66.

[70] *A-G Lagos State v A-G Federation* (2001) 14 WRN 1.

[71] (2007) 14 NWLR (Pt 1054) 275, 299.

contributing as tax towards the running of the affairs of the State being wasted when such funds could have been channelled into providing jobs, creating wealth and providing security to the citizens. The Court of Appeal stated that such a taxpayer has sufficient interest to protect by coming to court to enforce the law and ensure his tax money is utilized prudently.[72]

## XIV. STATE GOVERNMENTS SETTING UP AGENCY TO COMPETE IN THE FUNCTION OF BOARD OF INTERNAL REVENUE SERVICE

Strictly speaking, SBIR must be allowed to perform its constitutional duties. Sometimes States' Government Authorities try to set-up an Agency to intrude, rival and derogate the powers to collect revenue bestowed by the law on the States' Board of Internal Revenue. They do it in various forms in attempt to increase revenue drive generation. This was tested in the courts. In *Attorney General of Osun State v International Breweries Plc*[73] the taxpayer through the originating summons challenged the Osun State Government Revenue Generation, Collection and Accounting Agency (OSSRGCA) Law because it is inconsistent with Personal Income Tax Act 1993. The High Court held that under the 'doctrine of covering of the field' the law was covered by PITA and nullified OSSRGCA Law. The Court of Appeal upheld the judgment of the lower court and affirmed thus:

> By virtue of the Personal Income Tax Act 1993, the FGN made provisions for the collection and general services relating to taxes and revenue of all states in the federation. It also established the States Boards of Internal Revenue (SBIR) charged with specific functions in connections with the collection and general services relating to the taxes and revenues of the States. On its own part OSSARGAA Law made provision for collection and general services relating to taxes and revenues in the State at an accelerate rate and established its own agency charged with such functions instead of a board. In particular section 5(c)&(f) OSSARGAA Law provides that the Agency shall perform the duties of the SBIR in assessing, charging, collection and enforcements of all taxes, rates and levies due on behalf of OSSG. In enacting the OSSARGAA Law, the object and aim of OSSG is to create because it considered PITA and SBIR created under it as inadequate in the effective collection of taxes, revenues and dealing with defaulters. In creating its own agency to take over and perform the functions of SBIR and render it idle and redundant or possibly scrapped, it sought to amend or repeal PITA 1993. OSSARGAA Law is null and void because it is sharp conflict and utterly inconsistent with PITA.[74]

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[72] ibid 299 (Aboki JCA).

[73] (2001) NWLR (Pt 713) 647, 651.

[74] ibid, 662-663 (Adamu JCA); see also *Re Revenue Task Force* (1987) ODSMLR 13, 14.

Similarly, in *Re Revenue Task Force*,[75] nullified the Ondo State Revenue Generation Task Force Law which authorised the sequestration of goods and properties of alleged debtors without order of the court because it was ultra vires, unconstitutional and violates legitimate mode of collection of taxes and levies in violation of section 42(2)(a) CFRN 1999.

## XV. DISPUTES BETWEEN LOCAL GOVERNMENT AND TAX PAYERS

The disputes between local government councils and individual tax payers are resolved through filing originating summons or judicial reviews in the courts. The powers of the local governments over taxation are strictly regulated by Part III of the TLALC Act stated above. Any deviation shall be restrained by the courts. This is the position in *Fast Forward Sports Marketing Limited v Port Harcourt Local Government Council,*[76] where the tax payer receives notices of assessment for agricultural development levy, Economic development levy with threats from agents of the defendants to impound their goods and seal their premises. The amounts of taxes were far in excess with the ones stipulated in Part III of TLALC Act. The tax payer challenged it in court and defendants in spite of the repeated services of the court processes did not defend the action. The court granted injunction restraining the defendants from invading the premises of the claimant. The court was emphatic that the LGC has no power to unilaterally distrain and seize the goods of the taxpayer without the order of the court and held thus:

> No law authorized the distraint or seizure of the goods of the tax payer by the local government council for non-payment of taxes without order of the court even where the taxes demanded are legal. No law empowers the local government or any other tier of the government to distrain or seize goods for non-payment of taxes. The Local Authority must go to courts to seek this redress or the local government would be construed as acting as a judge, jury and executioner when it purports to threaten the claimant as that it would seize their goods if it does not pay the levies.[77]

In order to resolve the disputes between a local government council and individuals and corporate tax payers, the attitude of the courts is to adhere strictly to the regulating legislation and the constitution as the grundnorm.

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[75] (1987) ODSMLR 13, 14 (Adeloye CJ).
[76] (2011) 4 TLRN 45, 47.
[77] ibid, 47 and 53 (Olotu J).

In *Mobil Producing (Nigeria) Unlimited v Tai Local of Rivers State*,[78] the LGC passed a bye law requiring the payment of taxes on education, youths' empowerment, unified sticker, community development, discharge pollution, Niger Delta Development permit, land index oil levy, agricultural resources and craftsmanship development skills taxes. In a bid to enforce the payment, LGC mounted road blocks, impounded vehicles and the claimant who was affected filed originating summons seeking declaratory reliefs. The court held that LGC has no statutory authority to impose taxes, levies outside the specified areas stipulated in Part III of the TLALC Act 1998 and Fourth Schedule of the Constitution and that it is a criminal offence to mount road block in order to demand or collect taxes.[79] The court was emphatic that under section 251(1)(b) of the CFRN 1999, the claimant being a corporate body, the Federal High Court has exclusive jurisdiction to entertain civil matters connected with or pertaining to taxation of companies.

The court took the same view in *Corner Stone Insurance Plc v Surulere & Mushin Local Government Councils*,[80] where the issue was whether an LGC can impose a levy called 'mobile advertisement tax' on vehicles bearing the logo and names of the owners. Their drivers were intimidated and harassed by the officers of the LGC, the claimant initially refused to pay but later succumbed and challenged the validity of the tax paid and sought to recover the sum of N106,000.00 paid under protest. The court held that LGC has no power to impose and collect mobile advertisement tax because it is illegal, unconstitutional, illegal, null and void because it violates the Fourth Schedule of Nigerian Constitution 1999. His Lordship ordered the return of the refund of the money[81] and also opined that vehicles which have been duly registered and licensed can ply all routes in the federation of Nigeria.

When once the LGC complies with the legal requirements, its taxes and levies are enforceable. This is the position in *Ayoidowu v Attorney General of Lagos State, House of Assembly & Kosefe Local Government Council*,[82] in which the issue for determination was whether section 1(3) of the Land Use Charge Law of Lagos State, which subject privately owned properties to tax, is inconsistent with section 7(5), paragraph 1 of the Fourth Schedule of the CFRN 1999. The court returned a negative verdict and held that there was nothing in the Land Use Charge Law which

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78 (2004) 10 CLRN 100, 101.
79 Taxes and Levies (Approved Lists for Collection) Act 1998 s 2 (3).
80 (2013) 2 NRLR 100, 101.
81 Regrettably the court over sighted to order interests for the money unlawfully collected.
82 (2011) 5 TLRN 86, 88-89.

contravenes the Constitution because the constitution confers the power to assess and levy privately owned properties for tenement and other rates on the Local Government Council and Land Use Charge Law affirms that in every material particular. The court stated that:

> If one reads section 1(3) in isolation as the Claimant has done in his suit; it would certainly appear that there may be contravention. But a reading of section 1(2) along with section 1(3) shows very clearly that for the purpose of levying and collecting Land Use Charge, the Local Government Area is the sole collecting authority and the only body empowered to by the Constitution and Land Use Charge Law to levy and collect the Land Use Charge as prescribed by the House of Assembly. In other words, the LGA is the only body charged with the responsibility to assess, levy and collect Land Use Charge as required by the Constitution. It is only when that power is delegated by written agreement to the State that the State can carry out that function. It is not compulsory or mandatory that the LGA to delegate that power as the word 'may' is used in section 1(3). Where an LGA refuses to delegate its power, it would remain the collecting authority and the only body empowered to levy and collect Land Use Charge for its area of jurisdiction.[83]

## XVI. ALTERNATIVE DISPUTE RESOLUTION (ADR) AND TAX DISPUTES

The general rule is that alternative disputes resolution popularly called ADR is unknown to Nigerian tax law jurisprudence[84]. This is because the legislation creating taxes and levies exhaustively provided statutory mechanisms for the resolution of tax disputes and ADR is not one of them. The parties cannot by their own contractual agreement opt out of the procedures[85] stipulated by the tax Acts.[86] The legislative option of litigation is favoured because it provides precedents of tax cases whose judgements on identical facts and situation provide principles which would guide resolution of future disputes. The application of ADR in tax matte stifling and could frustrate appeals whose clarifications by the appellate courts would help shape and moulding our jurisprudence of taxation as guidance for the future disputes.

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[83] ibid 95-96 (Oyefeso J).

[84] FE Onyia, 'Arbitrability of Tax Disputes under Nigerian Law' (2009-2013) *Index to Nigerian Tax Law Report* 1-22.

[85] *NNPC v Esso & Shell* (2009-2013) *Index to Nigerian Tax Law Report* 1-22.

[86] *FIRS v NNPC* (2009-2013) *Index to Nigerian Tax Law Report* 1-22.

## XVII. REVENUE AND STATE HIGH COURTS HAVE JURISDICTION OVER TAXES COLLECTABLE BY STATE AND LOCAL GOVERNMENT TAX AUTHORITIES, DEPENDING ON FINANCIAL LIMITS

Tax disputes between SBIRS and individual taxpayers, including corporates bodies over personal income taxes and other categories of taxes are resolved through the Magistrate/District Courts styled as Revenue Courts established by the States. There are RCs at Uyo Akwa-Ibom, Port Harcourt Rivers, Calabar in Cross Rivers, Yenagoa in Bayelsa, Warri in Delta and Asaba, Abeokuta in Ogun and other States of Nigeria. Its jurisdiction is to hear and determine taxation disputes at the first instance, prior to appeals to the States' High Courts, Court of Appeal and Supreme Court. They are basically staffed by presiding Chief Magistrates of 7-10 years' minimum post-call experience whose jurisdictions are regulated by the statutes.[87]

By virtue of section 4 (1) (a) (b) (b) (c ) (d) (f) (2) (3) (4) Revenue Court Law 1989 of Akwa Ibom State, the Revenue Court shall have original civil and criminal jurisdictions to hear and determine causes, matters relating to the Revenue of Government, or any person suing or being sued, on behalf of the government or any organ of government or Local Government in relation to: (i) personal income tax under PITA, (ii) tenement rates under Rating and Valuation Law, (iii) Levy under Economic Development Levy Law, (iv) fees under Registration of Business Premises Law (v) any fees, rates, levies and taxes imposed under any other law in the State, (vi) any fees, rates, levies and charges duly imposed by the Local Government Council under its Bye Laws.

The jurisdiction of Revenue Courts, strictly speaking, refers to the revenue matters within the powers of the States' and LGAs.[88] Appeals as right under questions of Law and with leave under mixed law and facts, shall lie on decisions of RCs to the States High Courts[89] and shall not operate as stay of execution of judgements conditionally or unconditionally.[90] In *Seaweld Engineering Limited v Akwa Ibom State BIR*,[91] P applied to Federal High Court (FHC) for order of prohibition and certiorari to quash criminal action instituted against it, for not remitting to the AKSG, within 30 days as stipulated under section 73, the personal

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[87] Magistrate Courts' Law 1999 (Rivers), 2000 (Akwa-Ibom), 2004 (Cross Rivers) and 2006 (Bayelsa) and Revenue Court Law 1997 (Delta) States of Nigeria.

[88] Taxes and Levies (Approved Lists for Collection) Act 1998, Schedules II & III, and certainly not the Order 2016, which was made without authorisation of the FPNA.

[89] Revenue Court Law 1989 s 8(1) (Akwa-Ibom and Cross Rivers States).

[90] ibid, s 8(2).

[91] (2002) 1 FHCLR 295, 297-298.

income tax deducted from its workers' salaries pursuant sections 68, 69 and 70 of the PITA. It contended that Revenue Court has no jurisdiction, as the matter was civil rather than criminal. The court dismissed the action and held that:

(i) under section 2 of the PITA 1993, a state government (AKSG) is empowered to impose tax on certain categories of individual workers while the FGN can impose appropriate tax on itinerant workers, members of Nigerian Police and others specified in sections 1(b) and 2 of the PITA Individual workers' salaries, wages, allowances are taxable under section 3 of the PITA as profits from employment defined to include service rendered in return for gains or profits.

(ii) PITA empowers the State to impose and collect taxes as agent of the FGN. Under section 1(1) of the Taxes and Levies (Approved Lists for Collection) Act 1998, the States and LGA can constitute RTAs who are empowered under section 2(1) of the TLALFC Act, to assess and collect taxes on behalf of the FGN.

(iii) Section 73 PITA includes civil and criminal proceedings and in view of the circumstances of P's conduct, it is up to RTA to decide whichever is appropriate. Since P is regarded as an agent of D and an agent who withholds amount deducted as tax incurs the wrath of its principal and can be dealt with appropriately.

(iv) The RC has jurisdiction and there is no challenge to the procedure it adopted is not strange and alien to all known legal principles to warrant certiorari or prohibition.

(v) FHC cannot be the appropriate venue as it has no jurisdiction where the issue of Tax of a State is involved. The RC is the appropriate forum and appeals from RC lies to the State High Court (SHC) and it would have been proper to seek all remedies and reliefs at SHC.

(vi) The Revenue Court has jurisdiction to try all civil and criminal matters summarily under section 4(3) of the Revenue Court Law and the power of the court was limited to the imposition or award of the punishment not greater than that prescribed by Magistrate Court Law.

(vii) Under section 4 of the Revenue Court Law, Revenue Court has jurisdiction to summarily hear and determine such Tax matters specified without exception or categorization – the Chief Magistrate who sits in Revenue Court, has all the powers enabling him, to take all revenue cases regardless of the amount involved and there is no limit to the amount he can preside over.

**Commentary**: The above decision appears sound and faultless in reasoning and accords with the taxation separation of powers known to tax

jurisprudence of Nigeria. With the creation of Revenue Courts, the role of Tax Appeal Commissioners in the States appears impliedly abrogated because all their functions have been transferred and to the Revenue Courts and subsumed thereat. The similar validity and jurisdiction of Revenue Courts was further tested in *Ecodrill (Nigeria) Limited v Akwa Ibom State BIR*,[92] where the Appellant (A) was arraigned at the Magistrate's Court – Revenue Court of Akwa-Ibom State on 3 (three) counts charge of failure to remit PAYE Tax under PITA, withholding tax and economic development levy. At the trial, the only witness to AKSBIR did not adduce evidence relating to the residence of A's employees and under cross-examination, admitted there was no document which showed AKSBIR requested such information from A.

The evidence before the trial RC was that A had some expatriate employees working in two marine vessels 'Agbani and Taggart' and it was not established that the boats were within Akwa-Ibom's territory. A's witnesses testified that none of its expatriate employees were resident in AKS and sought to tender document which showed lists of its Nigerian employees and their residential addresses but the trial RC rejected the document. At the close of evidence, the Revenue Court struck out counts 2 and 3 of the charge and relied on the concept of 'deemed residence' and held A liable on two counts as its employees on the 2 marine boats were resident in AKS at the material time.

The High Court dismissed the appeal, affirmed A's conviction and held RC's reliance on the concept of deemed residence, was right in respect of the expatriate employees. Dissatisfied with the judgement, on further appeal, it was contended that under section 10(1)(a) of the PITA, the gains or profits from employment shall be deemed to be derived from Nigeria, if the duties of the employment are wholly or partly performed in Nigeria, unless:

(i) the duties are performed on behalf of an employer who is in a country other than Nigeria and the remuneration of the employee is not borne by a fixed base of the employer in Nigeria,

(ii) the employee is not in Nigeria for period(s) amounting to 183 days (inclusive of annual leave or period of temporary absence) or more in any 12 months period commencing in a calendar year and ending either within that same year and ending either within that same year or the following year, and

[92] (2015) 11 NWLR (Pt. 1470) 303, 307-315 (CA).

(iii) the remuneration of the employee is liable to tax in that country under the provisions of the Avoidance of Double Taxation Treaty with that other country.

The Court of Appeal unanimously set aside the decisions of both the Revenue Court and High Court Akwa-Ibom and held as follows:

> the basis of imposition and/or collection of personal income tax in Nigeria are two folds – residence and source. One of the bases of tax liability on the part of taxpayer and appropriate RTA to collect personal income tax, is 'residence'. Here, the only issue involved is 'residence' and by virtue of First Schedule PITA, the place of residence in relation to individual means a place available to him for domestic use in Nigeria on a relevant day but it does not include hotel, rest-house or other place like his temporary lodging unless no more permanent place is available for his use that day. As regards the definition of the place of residence, it is used to describe the residency status of taxpayer who has only one residence.

Nweze JCA was emphatic that the principal factor is a place available to the taxpayer for his domestic use and temporary places of abode such as residing in a vessel cannot serve as a place of residence under PITA, except if there is no permanent place available for the taxpayer's domestic use in Nigeria. In this limited instance, such temporal place(s) could serve as a place of residence. The definition intended by PITA is factual residence and does not cover deemed residence.[93]

Anyanwu JCA noted that the residence of the expatriate workers of ECODRILL can only be in Port Harcourt where their headquarters is situated under section 2 of the First Schedule of PITA and therefore Revenue Court and High Court were wrong to hold that expatriate workers were resident in Akwa-Ibom State because the vessels were moving and cannot be classified as a place of residence. By virtue of PITA, principal place of residence is used to determine the residence of a taxpayer who claims he has more than one place of residence. This case was only concerned with the resident status of the expatriate workers on whose behalf A did not claim any other place of residence.

## XVIII. TAX APPEAL TRIBUNAL AND ITS TERRITORIAL JURISDICTION

There are presently eight Tax Appeal Tribunals (TAT) in Nigeria located in all the six geo-political zones including Abuja and Lagos. They are saddled with the responsibilities to adjudicate on all tax disputes arising from the operations of the tax laws. Their composition, qualifications of its members, tenure of office are outside the scope of this paper and details

[93] ibid 309, 333-344.

should be sought elsewhere[94] suffice it to state that members must have experience and capacity in taxation, commercial and financial matters[95]. TAT has the jurisdiction to hear and review cases emanating from decisions in respect of application properly made to it by the aggrieved tax payers and also from the RTA desirous of enforcing tax legislation or aggrieved by the tax payer's refusal to pay the assessed tax. In doing so, it shall be independent and not subject to control or direction of any person or organ(s) of the State authorities. The jurisdiction of the TAT is not only governed by the geographical[96] location of the headquarters or registered office of the taxpayer/company but in the zone, that is, the district or location of the RTA that issued the tax assessment, took the action or made the decision appealed against[97] is located.

In *British American Tobacco Marketing Company (Nigeria) Limited v FIRS*,[98] the counsel for claimant taxpayer sought to transfer the case to the Abuja zone instead of Lagos zone where the suit was filed. The TAT held that the criteria for the determination of the appropriate zone which the appeal emanated from are governed by Order 4 Rules I and 2 of the Tax Appeals (Procedure) Rules 2010. The Tribunal was emphatic that the appropriate venue is determined by the following factors: the geographical root of the complaint comprised in the appeal? Which of the tax man issued the assessment or made the decision appealed against? In which zone of the Tax Appeal Tribunal, is the office of the tax payer's company located? The Tribunal further frowned at 'forum shopping' transferred the case to Abuja zone of TAT as the appropriate zone to determine the appeal because all the facts/events such as notice of assessment and notice of refusal to amend (NORA) all emanated from Abuja. The appropriate forum is called 'the territorial jurisdiction' not necessarily the location of the corporate headquarters of the company/tax payer or forum convenience.

In *Agip Exploration Limited & Oando Ltd v FIRS*,[99] the tribunal dismissed the application to transfer the case from Lagos to Abuja because under order 4 Rules 1 and 2 Tax Appeal Tribunal (Procedure) Rules 2010, the parties have no choice of forum on the ground of proximity and

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[94] In the erudite works of distinguished scholars such as MT Abdulrasaq, 'Tax Appeals' (CITN Tax Practice Series No. 20, 2003); A Sanni, 'Appeal Tribunal Procedure Rules in Nigeria: A Synoptic Evaluation' (CITN Tax Practice Series No. 29, 2010).

[95] Income Tax Act (Tanzania) s 89(1); Income Tax Act 1967 (Malaysia) s 98; Tax Consolidation Act 1997 (Ireland) s 50.

[96] Tax Appeal Tribunal (Procedural) Rules 2010, Order 4, Rules 1 and 2.

[97] *Nigerian Agip Exploration Co. Limited v FIRS* (Appeal No. TAT/Lagos/038/2010) and *Chevron (Nigerian) Ltd v FIRS* (Appeal No. TAT/Abuja/013/2009).

[98] (2011) 5 TLRN 54 at 56-57 (TAT case).

[99] 2011) 4 TLRN 141, 142-143.

convenience and since all the events/facts occurred in Lagos, it is the Lagos zone of the tribunal that has jurisdiction. The Tribunal was emphatic that the cases decided by other zones of the Tribunal are not binding on others but merely persuasive. In line with the above authorities, all companies whose fixed based is in Nigeria qualified as a company having residence or ordinary residence and therefore liable to company's Income Tax.[100]

## XIX. TAX APPEAL TRIBUNAL'S JURISDICTION OVER TAX MATTERS BETWEEN FEDERAL INLAND REVENUE SERVICE AND CORPORATE TAXPAYERS IN RESPECT OF FEDERAL GOVERNMENT TAXES AND LEVIES

Tax Appeal Tribunal (TAT) was established in accordance with section 59(1) of the Federal Inland Revenue Service (Establishment) Act 2007. TAT is involved in the external review mechanism provided in tax disputes resolution processes. It may affirm, set aside, vary, remit or dismiss the objection and its decision thereof. It may also confirm or declare an assessment as incorrect in exercise of its jurisdiction. The tax legislations of British Commonwealth Countries recognized the specialist's nature of income tax and they established specialized courts[101] to handle them.[102]

The TAT took off pursuant to Tax Appeal Tribunals Establishment Order 2009. By this enactment, TAT replaced the Body of Appeal Commissioners (BAC) and Value Added Tax Tribunals (VATT). In spite of the change in the nomenclature, the BAC now incorporated into TAT still

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[100] *Shell Petroleum Metacarpi BV v FIRS* (2011) 5 TLRN 114, 118, where the Court of Appeal held the company has a fixed base in Nigeria equivalent to ordinary residence, it is liable to tax under section 8 CITA even though it was not incorporated in Nigeria but provides technical and management services to Shell, it acquires income in or derives income in Nigeria..

[101] In UK and West Indian State of St. Lucia they are called Appeal Commissioners, Uganda; Tax Appeal Tribunal, Kenya, Trinidad and Tobago, Barbados -Tax Appeal Board, in Jamaica - Revenue Court, South Africa and Zimbabwe -Tax Court. In Malaysia, they are called Special Commissioners for Income Taxes and are appointed under section 98 Income Tax Act 1967 (Malaysia) and in *Kyros International Limited v Negeri* (2013) 2 MLJ 650, 651, the Court of Appeal held that because of their specialized knowledge in the scope of the taxation adjudication processes, they SCIT were appointed and entrusted with this responsibility. They comprise Lawyers, accountants, businessmen, finance managers with specialist knowledge, experience and expertise in taxation – see also, Tax Consolidated Act 1997, s 850 (Ireland Republic).

[102] The defunct Body of Appeal Commissioners (BAC) members were appointed by Federal Minister of Finance for the companies' taxation for FBIR while the Commissioner of Finance of a State appoints BTAC in relation to taxation of individual within the States, in the past.

retains the title of Tax Appeal[103] Commissioners[104] both in name and substance[105] comprising of people who are experienced and knowledgeable in tax matters and business environment outside the Federal Inland Revenue Service (FIRS). Although, they are appointed by the Minister of Finance on the recommendation of FIRS, there is a general assumption they will discharge their duties without fear or favour, will, or affection to anyone.[106] The TAT is basically an administrative review body but it performs quasi-judicial functions in relation to tax disputes emanating from all the various tax laws.[107]

This offers the complainant an opportunity to explore flexible dispute resolution mechanism unlike the rigid processes obtainable from the regular courts. The Body of Appeal Commissioners (BAC) is now subsumed under TAT and shall have powers to entertain cases arising[108] from tax disputes over the FGN taxes and levies.[109] In *Skye Bank Plc v Kwara SBIRS*,[110] the court of Appeal held TAT is merely an administrative tribunal set up to determine the correctness of assessments to tax without fixation of formality, TAT is not a court and therefore its jurisdiction cannot oust the jurisdiction of courts.[111] The CA was emphatic that under section 59(1) of the Federal Inland Revenue Service (Establishment) Act 2007 and section 60 of the Personal Income Tax Act, TAT's jurisdiction covers disputes arising from the FGN taxes and levies and strictly, it has no

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[103] *Preussag Drilling Engineering Co. Limited v. FBIR* (1991) FHCLR 93, 95, wherein Belgore CJ held that a tribunal like the body of tax appeal commissioners is not bound by the technical rules of evidence but violation of the elementary procedure of drawing the attention of a party to a documentary evidence upon which the tribunal was going to base its finding against him, is a denial of natural justice.

[104] *Mobil Producing Limited v FIRS* (2013) 2 NRLR 1, 3 (TAT case).

[105] *Ola v FBIR* (1974) NCLR 85, 86 (1973-1974) FHCLR 70, it was held that tax appeal commissioners are quasi-judicial body and it is the essence of justice that they do not rush themselves or allow themselves to be rushed when dealing with matters and should not dismiss matters summarily except those in which there is no merit whatsoever or which contains nothing at all worthy of careful consideration and it is advisable that they should deliver a well-prepared judgment.

[106] PITA 1993, s 60 as amended by Cap. 20 (2011).

[107] *Mobil Producing Ltd v. FIRS* (2013) 2 NRLR 1, 3 (TAT case), where it was held that if it is a tax dispute, it falls within jurisdiction of TAT.

[108] PITA 1993, s 60 as amended by Cap. 20 (2011).

[109] Fifth Schedule, para 11 (1) of the Federal Inland Revenue Service (Establishment) Act provides that TAT shall have power to adjudicate on disputes and controversies arising from Companies Income Tax Act (CITA), Personal Income Tax Act (PITA), Petroleum Profits Tax Act (PPTA), Value Added Tax Act (VATA), Capital Gains Tax Act (CGTA) and any other law contained or specified in the First Schedule to this Act or other laws made or to be made from time to time by the National Assembly.

[110] (2021) 12 NWLR (Pt 1789) 27.

[111] *FIRS v General Telecom* (2012) 7 TLRN 108.

jurisdiction over taxes and levies belonging to the 36 state governments of Nigeria.

## XX. TAX DISPUTES RESOLUTION BETWEEN STATE BOARD OF INTERNAL REVENUE SERVICE, LOCAL GOVERNMENT REVENUE COMMITTEE AND INDIVIDUAL TAXPAYERS AND COMPANIES FOR CERTAIN CATEGORIES OF TAXES

The States' High Courts (SHCs) have jurisdiction for categories of taxes under parts II and III of the Taxes and Levies (Approved Lists for Collection) Act 1998 such as personal income tax under PITA, Withholding Taxes, States Development Levies[112], Land Use Charges,[113] tenement rates under Rating and Valuation Law, fees under Registration of Business Premises Law, fees, rates, levies charges and taxes imposed under any other law in the State and the Local Govt Council under its Bye Laws, especially where there are large financial claims and substantial questions of Law. The SHCs have unlimited jurisdiction under section 236 of the CFRN 1999 to entertain matters including those relating to the enforcement of payment of the taxes stated above, which are to state government.

In *Skye Bank Plc v Kwara SBIRS*,[114] KSBIRS claimed the sum of N21,887, 970.81 being outstanding liabilities for 2008-2010 financial year arising from under-deductions taxes, levies, withholding tax and ones actually deducted but not remitted pursuant to SS. 2, 3 and 4 Personal Income Tax Act and Kwara State Tax Law. The State High Court granted the claim. Court of Appeal dismissed the contention that the State High Court has no jurisdiction and held thus:

(i). That it is the State High Court and not the Federal High Court that has jurisdiction over the disputes arising over Revenue accruable to the state government under Personal Income Tax Act[115] and Withholding tax.

(ii) TAT is an Administrative tax tribunal empowered under section 59(2) Federal Inland Revenue Service (Establishment) Act 2007, to primarily entertain disputes arising from the correctness of assessments to tax without fixation of formality, over taxes and levies due to FGN[116] collectible by FIRS.

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[112] *Nigerian Bottling Co Limited v LSBIR* (2000) 2 Lagos State HCLR (Pt 8) 147, 148-149.
[113] *Shell PDC Limited v Governor Lagos State & Etiosa LGA* (2002) 3 Lagos State HCLR (Pts 28-29) 18, 19-21.
[114] (2021) 12 NWLR (Pt 1789) 27.
[115] Personal Income Tax Act, ss 2, 3 and 4.
[116] *Addax v FIRS* (2012) 7 TLRN 74.

(iii). That it is the Kwara SBIRS as the body that is empowered to ascertain – assess, impose and collect the taxes payable to the Kwara State Government by the taxpayer under Kwara State Tax Laws because FBIRS is only empowered to assess. Impose and collect Revenues accruable to the FGN.

## XXI. FEDERAL HIGH COURT'S JURISDICTION OVER REVENUE MATTERS OF THE FEDERATION

Tax Appeal Tribunals, are subject to the appellate jurisdiction of the Federal High Court (FHC), which has jurisdiction over the taxation and revenue matters of the Federation of Nigeria. The Right of Appeal lies to Court of Appeal and Supreme Court either as right or subject to leave (permission) of the appellate courts. In spite of its appellate jurisdiction, the FHC has exclusive jurisdiction over matters of the Revenue of the FGN[117] and matters connected with or pertaining to taxation.[118] In *Esso Exploration & Production (Nigeria) Limited v FIRS*,[119] the CA held that is the functions and powers of FIRS as the body that is empowered to ascertain – assess and impose the taxes due to the FGN payable by the Corporate taxpayers and by the Statute establishing FIRS, this includes the right of action to prevent exercise or infringement of the same powers by another body.[120] In *Skye Bank Plc v Kwara SBIRS*,[121] the Court of Appeal held under section 251(1)(b) of the CFRN 19999 and section 59(1) of the Federal Inland Revenue Service (Establishment) Act 2007, and S.7 Federal High Court Act 1973, only the Federal High Court has jurisdiction over the Revenue of the Federation and over the taxes and levies accruing to the FGN.

## XXII. CONCLUSION AND RECOMMENATIONS

There is bound to be conflict between the Federal, States and Local Government Authorities. Unless these taxes are thoroughly harmonized by the Legislative houses, they would surely face stiffer challenges in our law courts. These multiplicities of taxes which were the very mischiefs that was supposedly cured through the passage of Taxes and Levies (Approved lists) Act 1998, which reappeared through the back-door through the executive promulgated Taxes and Levies (Approved lists) Order 2015 made by

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117 CFRN 1999, s 251(1) (b).

118 *A-G Bauchi State v A-G Federation* (2021) 17 NWLR (Pt 1648) 299; *MTN Communications Ltd* [2016] 1 NWLR (Pt 1494) 475 (CA).

119 (2021) 8 NWLR (Pt 1777) 43.

120 Federal Inland Revenue Service (Establishment) Act 2007 s 25.

121 (2021) 12 NWLR (Pt 1789) 27.

Minister of Finance without legislative surgical operation - the matured, painstaking debates of members of the National Assembly was nullified in *Registered Trustees of Hotels' Owners & Managers Association v Attorney General of Federation & Minister of Finance*.[122] This would have undoubtedly crippled many businesses in the private sector which had not fared well and for many years have not been able to play its pivotal and resuscitating role to improve the Nigerian mono-export economy entirely dependent on oil revenue. How can the Minister of Finance pass far-reaching in nature substantive legislation through the subsidiary/bye laws processes without the accompanying 'legislative surgical operations' which could only be procured thorough the matured, painstaking debates of members of the National Assembly.

On the general assessment of the tax disputes resolution processes, the court have been playing pivotal roles to uphold the principles of separation of powers. The courts have also ensured that the jurisdictions as to collection is maintained without permitting encroachment from other segments of tax collection agencies. We also advocate amendments and reforms. It is advocated that tax statutes which were nullified by the court may be reintroduced as legislative proposals (bills) to the National Assembly who would undertake panel-beating processes to translate them into Bills and Acts by Presidential assents. The National Tax Court of Nigeria (NTCN) should be established to transform the present Tax Appeal Tribunals (TATs) into Courts of Superior Records in the 36 States of Nigeria including Abuja Federal Capital Territory (comparable to the National Industrial Court of Nigeria (NICN). This would make the adjudication of tax disputes more functional comparable to the National Tax Courts, Revenue/Taxation Courts obtainable in Canada, USA. South Africa and Jamaica.

Before this is done, we advocate the abolition of TATs' jurisdictions outside Lagos, Ibadan, Benin, Enugu, Abuja, Kano and Jos. The jurisdiction of TATs' outside the above urban areas, should be abolished and all their functions outside Lagos, Ibadan, Enugu, Abuja, Jos, Kaduna Tax Appeal should be transferred to Magistrate Courts - Revenue Courts staffed with Chief Magistrate and assisted by the Experts' Assessors comprising Taxation and Fiscal Specialists drawn from CITN. The Chief Magistrate's, like the ones at Uyo, Akwa-Ibom and Abeokuta in Ogun States of Nigeria, are notable examples. This would cure the perennial and soaring costs of litigation which compels litigants from Uyo, Eket, Ogoja, Ikom, Obubra, Calabar, Ikot-Ekpene, Uyo, Eket, Port Harcourt, Degema,

[122] (2020) 52 TLRN 1, 5-10.

Bonny, Yenagoa to incur hotel bills, travelling costs, long-distance journey risk of between 2 to 3 days to and from Benin City in Edo State, in order to contest tax dispute cases. Others in Zamfara, Sokoto, Kebbi, Borno, Yobe, Bauchi and Plateau States of Nigeria suffer the same fate.

We further advocate the reconstitution of the Panels Handling Objections in FIRS, SBIR and LGRC. It is imperative that its membership could be enlarged to encompass some independent persons knowledgeable in taxation and fiscal matters and representatives of Chartered Institute of Taxation of Nigeria (CITN). There should be specified time-limit with which objections should be handled and disposed-off. A maximum of three to six months, should be given to them to complete their review, make decisions and discharge their duties timeously. It is advocated this should be reformed in like with the Jamaican Revenue Administrative Agency (RAD) an independent tax disputes resolution agency comparable in our tax resolution system.

The current legal problem is the non-compliance with the above criteria prohibiting self-help relating to tax practice where the RTAs exercise its powers wrongly - sealed the premises of the taxpayer. In some instances, RTAs leave instructions to their staff at its' Head-Office not to receive/accept notice of objection, the DHL Currier deliveries personnel were turned back on three occasions. The objections eventually, were not heard and the review of the tax assessments did not take place and the premises were sealed and remained sealed until the taxpayer acquiesced and became submissive without due process. The taxpayer did not have the opportunity to contest the tax assessments that may be irregular, unbalanced and lop-sided and perhaps to test the application of tax laws on the facts of that particular case.

The legal community comprising law teachers, tax law practitioners, chartered tax practitioners, tax administrators, tax inspectors, economists, accountants, finance and business managers, as well as businesses are deprived of the opportunity to learn new caselaw principles and developments emanating from the decision of superior courts on the application of tax statutes and whether the limitations and pre-conditions stipulated by the law were adhered to before the exercise of powers of RTAs. Further, what are the legal sanctions are to be applied for impunity – sealing the taxpayer's premises without the order of the court, resort to the punitive measure of self-help – to seal the premises of the taxpayer's, in order to recover unpaid taxes. We cannot learn whether the taxpayer had actually defaulted, until the superior courts had pronounced on the facts and evidence thereon.

For the purpose of reforms, it is advocated that the same reforms introduced under section 104 of PITA be extended to other categories of taxes such Capital Gains Tax, Petroleum Profits Tax, Withholding Tax, Value Added Tax, Stamp Duties Tax, Other Taxes and Levies beyond Income Tax. The amendments should be extended to Small Revenue Claims within the jurisdiction of Magistrate Courts and all others in State High Courts, Tax Appeal Tribunals and Federal High Courts in the enforcements of recoveries of tax revenue of the FGN by FBIRS, SBIRS and LGRC. The requirement of field-tax-audit, should be given statutory recognition so that it can become infallible proof of the criteria and evidence to support ex-parte application to court in support of the application of the principle enunciated in *NDDC v RVSBIRS* analysed above.

It is advisable that tax administrators, inspectors, practitioners who aid the violation of law by resorting self-help cases without the order of the court, should face professional discipline. The Chartered Institute of Taxation of Nigeria (CITN) Chartered Institute of Accountants of Nigeria (ICAN), Association of National Accountants (ANAN), CPA and other professional bodies, should impose penalties on overzealous professional members who err and transgress on the law. Clients who acquiesce to intimidations should wake up and proceed and get the court' judgements and appellate courts' verdicts on the violations of the rule of law. United States Tax Court[123] staffed with experts in taxation where litigants can dispute tax deficiencies, review of certain collection actions determined by RTA and other incidental matters[124] Victor Thuronyi summed up the position as follows:

> The judges understood the tax well. They are not faced by complex facts patterns and they are not impressed by taxpayer arguments seeking to justify tax avoidance efforts. The tax courts judges tend to try to uphold the integrity of the tax system; therefore, they are sympathetic to the government's economic substance attack on tax shelters. At the same time they will reject the government's arguments that they see as inconsistence with the law and they do so with confidence in their understanding of the law.[125]

[123] Revenue Act 1942 and Tax Reform Act 1969 s 8 (USA).

[124] R Levine, T Peyser and D Weintraub, *Tax Litigation, Tax Management Portfolio* (4th edn, Bloomberg BNA 2012) 630.

[125] V Thuronyi, *Comparative Tax Law* (Kluwer Law International 2004) 215-220.

There are also other superior tax courts of records equivalent to the one being advocating such as the Tax Court of South Africa (TCSA)[126] and Revenue Court in Jamaica.[127]

**Proximity as a Factor for the Proposed National Tax Court of Nigeria**

The courts should be accessible to the litigants and its location is an essential factor. Nigeria is a nation built on tripod stand comprising the defunct Eastern, Northern, and Western regions. Even though, the six geo-political zones have emerged but its former geographical characters are still retained. Although, Benin is a beautiful city originally was in Western Region. It later metamorphosed into Mid-West, later Bendel and presently it is in Edo State. Compelling taxpayer litigants based in the Eastern Nigerian cities of Ugep Ogoja, Calabar, Uyo, Ikot-Ekperne, Eket, Port Harcourt, Degema, Bonny, Yenagoa to attend the TAT at Benin City Edo State is not costs-effective. Port Harcourt takes a minimum of 4-5 hours' drive to travel to Enugu and it is closer than Benin City which is a distance of 6 to 7 hours' drive. The litigants at Sokoto, Kebbi Zamfara States suffer the same fate of two to three days journeys to and fro Kaduna. So also those residents at the remotest part of Borno, Yobe, Adamawa, Plateau traveling to Bauchi zone of the TAT, encounter two to three days to and fro journeys. These coupled with hotel bills and the attendant journeys risks are matters associated with the zones of the TAT handling tax cases. The soaring costs would discourage tax litigation. If the costs benefits analysis are evaluated, the taxpayers may be intimidated, frightened to embark on litigation or possibly subdued into out of court settlement whose terms are dictated by the mercy, whims or oftentimes caprice of the RTAs' in spite of the facts that most of the objections/appeal cases may have greater chances of success.

Furthermore, TAT have minimum sitting of once, twice or thrice per quarter. Sometimes the tenures of the TAT chairman and tax appeal commissioners may expire without renewal. These cause delays, disruption and occasion hardship to litigants in urgent case[128]. Instead of part time or adjunct members, we advocate the appointments of career processionals and tenured judges as judicial officers such as the proposed National Tax Courts of Nigeria (NTCN). It is advocated that the proposed National Industrial Court be cited in all the 36 States of the Federation of Nigeria

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[126] L Connell, 'Trial by Ambush in the Tax Court' (2003) 120 *South African Law Journal* 558-579.

[127] Income Tax Act 1985 s 16 (Jamaica).

[128] U Jack-Osimiri and M O'Sullivan, 'Dynamics of Tax Appeal in Nigeria' (2014) 13(1) *Journal of Taxation and Economic Development* 1-37.

including Abuja Federal Capital territory like the National Industrial Courts to save costs and journey risks. Tax Court of Court currently sits in 68 cities of Canada[129].

It is further suggested that the payment of the judgment debt or two thirds of it, as a condition of appeal should be abrogated. The most sensible approach is for the taxpayer to pay the undisputed portion of the tax assessed like the system in Tanzania. Compelling the appellant taxpayer to pay all or part of the judgment debt is stifling and could frustrate appeals whose clarifications by the appellate courts would help shape and moulding our jurisprudence of taxation as guidance for the future disputes. The appeal court should be given the discretion whether to grant a stay of execution pending appeal or not following the well-defined principles of law enunciated in our legal system.

In *FIRS v TSKJ Construcoes Internationals Sociadade Unipessoallba*,[130] the Federal High Court held that in application for stay of execution pending appeal, the court must exercise its discretion judicially, judiciously taking into account the competing rights of the parties and the requirement of justice and the court would do so if it is satisfied that there are special and substantial reasons to deprive the successful party of the fruit of his judgment. In this case, the court refused the stay of execution for the judgment debt because there were neither exceptional circumstance nor arguable grounds and recondite points of law raised by the applicant/Counsel.

The court nevertheless granted the order for the stay of execution of costs of N400, 000 provide the appellant provides security undertaking to pay the sums to the Respondent should the appeal fails. This case is technically correct because in *Harris v. Inspector of Taxes*,[131] the Supreme Court of Ireland held that tax overpaid taxes pending appeal should be refunded because the taxpayer is entitled to a refund of excessive tax and it is obligatory that it should be repaid pending final determination of appeal.[132] The problems of the congestion of cases and snail-pace of cases at the TAT have been stresses.[133] The engagements of tenured career judges would alleviate this problem. The amendments of taxation laws may take lengthy period and in the interim, it is suggested that TAT should be

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[129] Tax Court of Canada 20 Anniversary Symposium (2005) 53 *Canadian Tax Journal* 135-175.

[130] (2014)14 TLRN 159, 161.

[131] (2006) 1 I.R 165, 166-167

[132] Under equitable principle of unjust enrichment. See also, Tax Consolidation Act 1997 (Ireland) ss 933(4), (6) 934 (6) and 941(9).

[133] O Adedokun, 'Slow Pace of Tax Appeal Tribunal' *This Day* (8 August 2013) 74.

pro-active and move their sittings intermittently from one State capital to the other in all the zones. This is comparable to National Tax Appeals Board of Tanzania (NTAB) whose itinerant responsibility mandated it to move from one region to another in order to discharge its onerous adjudicatory responsibilities.[134]

It is suggested that there should be a reversal of the burden of proof on the taxpayer through legislative changes. The onus should be on RTA to prove its assessment is correct,[135] rather than stifling the taxpayer to bear the burden of establishing that the assessment is excessive. The internal review of objection department of the RTA should be strengthened. It is suggested that some external members should be appointed from professional bodies such as the Chartered Institute of Taxation of Nigeria into RTA internal review committee. This would help improve its effectiveness in the quicker dispensation of its duty to review assessment expeditiously to reduce delay and attendant costs. We suggest the adoption of the best practice identified from the Australian system whereby the internal review would be carried out by an officer different from the officers who carried the assessment. We also advocate the adoption and adaptation in Nigeria, the United States model in the Internal Revenue Service (IRS) styled the National Taxpayers Advocate (NTA).[136] Under this system, the Head of NTA is directly appointed by the US federal government and he is a member of the senior management team in the IRS with high level of information flow. The NTA independently of IRS in that it is not directly accountable to it but rather reports to the Congress. NTA operates Low Income Taxpayers' Clinic which provides professional representation to individuals who need to resolve tax related problems with IRS thereby making tax disputes resolution processes accessible to Americans with low income.

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[134] Income Tax (Appeal Board) Rules 1975 (Tanzania).

[135] Binh-Tran-Nam & Michael Walpole, 478; M Jones, *Evaluating Australia's Tax Disputes System: A Dispute System*, 563

[136] Internal Revenue Service, 'United States Department of the Treasury: The Taxpayers Advocate (12 June 2012) I *Your Voice at IRS* <http://www.irs.gov/advocate/article/o.id=212313,00.html> accessed 2 June 2023.

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